

The within Lease Agreement has
been executed in 10 counterparts
of which this is Counterpart No. 5

RECORDED & INDEXED

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RECORDATION NO. _____ Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT

between

PACIFIC CAR AND FOUNDRY COMPANY

and

UNION PACIFIC RAILROAD COMPANY

—◆—

Dated as of May 1, 1971

THIS LEASE AGREEMENT, dated as of May 1, 1971, between PACIFIC CAR AND FOUNDRY COMPANY, a Washington corporation (hereinafter called the "Lessor") and UNION PACIFIC RAILROAD COMPANY, a Utah corporation, with an office at 345 Park Avenue, New York, New York (hereinafter called the "Lessee");

WITNESSETH:

1. *Lease and Rental.* The Lessor will, as contemplated by the Lessee's purchase order described in Schedule A hereto (hereinafter called the Purchase Agreement), construct at its manufacturing plant, set forth in the said Schedule A, the cars which are to be subjected to this Lease, as described and to be numbered as set forth on the said Schedule A (all of the foregoing cars being referred to as the Cars), in accordance with the specifications applicable thereto pursuant to the Purchase Agreement and any modifications thereof as agreed to between the Lessor and the Lessee (hereinafter called the Specifications).

The Lessor hereby leases to the Lessee and the Lessee hereby hires from the Lessor each of the Cars, for use upon its lines of railroad, and upon connecting and other railroads in the usual interchange of traffic, upon the terms and subject to the conditions hereinafter set forth. Such Lease shall become effective as to each Car upon delivery to and acceptance by the Lessee thereof, and shall terminate, unless modified or amended prior thereto, as to all Cars which have become subject to it, either (a) upon purchase of the Cars subject to this Lease by the Lessee, pursuant to Article 12 hereof, or, (b) in the event that the cars subject to this Lease become subject to either an equipment trust agreement, conditional sale agreement or other equipment financing arrangement, upon payment to the Lessor of the Purchase Price (as that term is defined in Section 12 hereof) of such Cars under such equipment trust agreement, conditional sale agreement or other equipment financing arrangement, as the case may be. Such termination of leasing under this Lease may be confirmed by an appropriate instrument executed by Lessor and/or Lessee.

For the use and rental of the Cars, the Lessee agrees to pay the sum of \$1 and other good and valuable consideration. This rental shall be due and payable to the Lessor in cash on the date on which the Lessor shall receive payment of the Purchase Price (as hereinafter defined) of such Car.

2. *Delivery.* The Lessor will deliver the Cars to the Lessee at the delivery point specified in Schedule A hereto, or at such other point upon which the Lessor and the Lessee may mutually agree.

On delivery of the Cars by the Lessor and acceptance by the Lessee, the Lessee will assume the responsibility and risk of loss with respect to the Cars so delivered.

Each Car shall be tendered by Lessor to Lessee at the appropriate point of delivery hereinbefore specified and the Lessee shall cause each Car to be inspected by the Lessee or its representative and agrees that such inspection shall not be delayed beyond 48 hours after receipt of notification by the Lessee that such unit is ready for inspection.

If such Car is in good order and condition and conforms to the Specifications and to all applicable Interstate Commerce Commission requirements and all standards recommended by the Association of American Railroads, the Lessee or its representative shall accept the Car and execute a certificate of acceptance (hereinafter called the Certificate of Acceptance) in the form attached hereto as Exhibit 1. Such Certificate of Acceptance shall constitute conclusive evidence that the Car has been delivered to and accepted by the Lessee under this Lease; provided, however, that such delivery and acceptance shall not relieve the Lessor of its warranties provided for in the Purchase Agreement and the obligations under this Lease with respect to warranty obligations of the Lessor shall be those in the Purchase Agreement. The Certificate of Acceptance shall be delivered to the Lessor at the time of the delivery of each Car to the Lessee. The Lessee shall promptly, after the execution of this Agreement, deliver to the Lessor a certificate stating the persons authorized to execute and deliver Certificates of Acceptance on behalf of the Lessee.

Prior to the delivery of each Car to the Lessee, it shall be numbered with a car number as hereinbefore provided and there shall be plainly, distinctly, permanently and conspicuously marked on each side of each Car the following legends* in each case in letters not less than one inch in height:

“OWNED BY A SECURED PARTY UNDER A SECURITY AGREEMENT FILED UNDER INTERSTATE COMMERCE ACT, SECTION 20c”.

“UNION PACIFIC RAILROAD COMPANY, LESSEE/ VENDEE”

In case, during the term of this Lease, such markings shall at any time be removed, defaced or destroyed on any Car, the Lessee shall immediately cause the same to be restored or replaced.

* or such other legend as may be specified by the Lessee.

3. *Title to the Equipment.* Notwithstanding the delivery of the Cars to and the possession and use thereof by the Lessee, the Lessor shall and hereby does retain the full legal title to, and a security interest in, each of the Cars, subject only to the rights of the Lessee under this Lease.

The Lessee, will, throughout the term of this Lease, cause the Cars to be kept numbered with their identifying numbers, as specified in Article 1 hereof. The Lessee will not change the numbers of any of the Cars without first notifying the Lessor in writing. In any such case, the new number shall be set forth in a supplemental lease or in an amendment to this Lease which the Lessor and Lessee shall execute, and the Lessee shall file or record such supplemental lease or amendment in each jurisdiction wherein this Lease is recorded or filed in accordance with Article 11 hereof.

4. *Maintenance and Repair.* The Lessee shall at its own cost and expense maintain and keep said Cars in good order and repair at all times subject to the right of the Lessor to inspect the condition and supervise the maintenance thereof (but the Lessor shall be under no obligation to so inspect and supervise). However, in the event the Lessor does so inspect and supervise as provided in this Article 4, the Lessee will not assume liability for any injury to, or death of any agent or employee of Lessor while exercising these rights.

5. *Loss or Destruction.* In the event of loss or destruction of or irreparable damage to any of the Cars from any cause whatsoever during the term of this Lease, the Lessee shall promptly and fully inform the Lessor in regard to such loss, destruction or damage, and the Lessee shall pay promptly to the Lessor, in addition to the rent due hereunder, a sum equal to the Purchase Price of each Car so lost, destroyed or damaged, whereupon this Lease shall terminate as to such Car.

6. *Taxes and Compliance with Laws, Rules and Regulations.* The Lessee shall promptly pay all taxes (other than income taxes imposed upon the Lessor), licenses and assessments on or in respect of the Cars (including any which may be imposed upon or in respect of said Cars by reason of or in connection with the Lessee's possession or use of the Cars under this Agreement, or by reason of Lessor's retention of an interest therein) and agrees at all times to keep said Cars free and

clear of all taxes, assessments, liens and encumbrances and covenants, and that the Cars at all times hereunder will be maintained, used and operated under and in lawful compliance with the laws, rules and regulations to which they may be subject in any local, state or federal jurisdiction. Any sums of money that may be paid by the Lessor at its option by way of release, discharge or otherwise, of any of the foregoing, shall be promptly reimbursed and paid to the Lessor by the Lessee on demand as an additional part of the obligation herein with interest thereon at the rate of 10% per annum from the date of such payment by Lessor.

The Lessee, however, may withhold any such payment so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner and such withholding does not, in the judgment of the Lessor, affect the Lessor's title to or security interest in any of the Cars.

7. *Prohibition Against Liens.* The Lessee will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Lessee and its successors or substitutes or assigns, or a person, firm or corporation using the Cars, which, if unpaid, might become a lien or a charge upon the Cars but shall not be required to pay or discharge any such claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not effect the title of the Lessor in and to the Cars.

8. *Lessee's Indemnities and Guarantees.* The Lessee will save, indemnify and keep harmless the Lessor from and against all losses, damages, injuries, claims and demands whatsoever, regardless of the cause thereof, arising on account of the Cars or the use or operation thereof during the term of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the purchase of the Cars by the Lessee as provided in Article 12 hereof, or the termination of this Lease in any manner whatsoever.

The Lessee shall not be released from its obligations hereunder in the event of any damage to, or the destruction or loss of the Cars; provided, however, that the Lessor and any successor or successors to its manufacturing property and business shall not, as to the Cars so destroyed or lost, be relieved from its warranty covering workmanship and material or design as provided for in the Purchase Agreement.

9. *Assignments by the Lessors.* All or any of the rights, benefits and advantages of the Lessor under this Agreement may be assigned by the Lessor and reassigned by any assignee at any time and from time to time, provided, however, that no such assignment shall subject any assignee to, or relieve the Lessor or the successor or successors to its manufacturing property and business from, any of the obligations of the Lessor to construct and deliver the Cars in accordance with the Specifications or to respond to its guarantees, warranties or indemnities as provided for in the Purchase Agreement, or relieve the Lessee of its obligations to the Lessor under Articles 6 and 8 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of Lessor's right, title and interest in and to the rights, benefits and advantages of the Lessor thereby assigned, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Lessee of the notification of any such assignment, all payments thereafter to be made by the Lessee hereunder shall, to the extent so assigned, be made to the assignee.

In the event of any assignment by the Lessor of its rights to receive any payments under this Lease, the rights of such assignee to such payments as may be assigned, together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim, or recoupment whatsoever arising out of any breach of any obligation of the Lessor in respect of the Cars or the manufacture, construction, delivery, guarantee or warranty thereof, or in respect of any indemnity contained in this Lease, nor subject to any defense, set-off, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Lessee by the Lessor. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Lessee, its successors or assigns, against the Lessor, its successors and assigns (other than assignees, as such, of rights, benefits and advantages assigned pursuant to this Lease). The provisions of this paragraph may be relied upon by any such assignee as a continuing offer by the Lessee to waive any remedies which it might otherwise possess for the

enforcement of any and all such obligations of the Lessor as against such assignee, which offer shall be conclusively presumed for all purposes to be accepted by the assignee by payment to the Lessor of the consideration for the assignment of any of the Lessor's rights under this Lease.

10. *Assignments by the Lessee.* Lessee will not sell, assign, transfer or otherwise dispose of its rights under this Agreement nor, except as herein otherwise provided, transfer possession of said Cars to any other firm, person or corporation without first obtaining the written consent of the Lessor to such sale, assignment or transfer.

11. *Recording.* Lessee will at its expense, upon execution and delivery of this Agreement and upon execution and delivery of any amendment or supplement hereto, cause this Agreement and any such amendment or supplement, to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and as otherwise required in order to protect Lessor's title to, and perfect its security interest in, the Cars.

12. *Purchase of Cars.* In the event no equipment trust agreement, conditional sale agreement or other equipment financing arrangement shall have been filed and recorded with the Interstate Commerce Commission under Section 20c of the Interstate Commerce Act by September 1, 1971, Lessee shall purchase the Cars subject to the Lease and make payment of the Purchase Price (as hereinafter defined) of such Cars to the Lessor on or before September 15, 1971. The final purchase price for each Car shall be as provided for in the Purchase Agreement (herein called the Purchase Price). Title to the Cars shall vest in purchaser thereof upon such purchase and payment therefor in cash and delivery shall be deemed to be effected at such points as the Cars shall be at such time.

13. *Default.* In the event of any failure at any time on the part of the Lessee to comply with any of the terms and conditions contained in Articles 1 through 11 hereof, the Lessee, at the election of the Lessor, which election shall be evidenced by notice thereof in writing given by the Lessor to the Lessee, shall be obligated to purchase and pay for all of the Cars subject to this Agreement within five (5) days after the receipt of such notice (unless within such five-day period

such default shall have been cured) in accordance with all the terms and conditions contained in this Agreement with respect to purchase of the Cars other than the date for purchase set forth in Article 12 hereof.

In the event of any default by the Lessee in respect of any of its obligations under the terms of this Agreement, Lessor may, at any time after the occurrence of such event and upon written notice to the Lessee and in compliance with any legal requirements then in effect, terminate this Lease and take or cause to be taken immediate possession of the Cars, and in such event, all of the Lessee's rights in the Cars will thereupon terminate; provided, however, that such retaking shall not be deemed a waiver of the Lessor's right to receive the full purchase price of the Cars plus interest thereon at an annual rate of 10% from the date of default, or of any other rights or remedies conferred upon the Lessor by this Agreement or by law, and provided, further, that in the event of such retaking and thereafter of the payment by Lessee of the purchase price, together with a sum equivalent to the costs and expenses, including attorneys' fees, incurred by the Lessor in such retaking, and the making good of all defaults hereunder, cost of maintenance, insuring, reconditioning and redelivery and all other costs reasonably incurred in connection with such retaking and redelivery, the Lessor at the time of such payment shall deliver the Cars to the Lessee (other than Cars which have been destroyed) in the condition they were in when retaken and by appropriate instrument or instruments transfer to the Lessee title to and property in the Cars free and clear of all liens and encumbrances. In the event that the payment of the full purchase price is not made by the Lessee to the Lessor within ten days after the date when payment is due, the Lessor, at its option, may within a reasonable time thereafter, sell the Cars, in which event the Lessee's rights in the Cars shall cease and terminate and its obligation to pay to the Lessor the full amount of the purchase price, plus a sum equivalent to the costs and expenses incurred by the Lessor in retaking the Cars, shall be reduced by an amount equal to the net proceeds of sale of the Cars.

14. *Payments by Lessee.* The payments provided for in this Agreement shall be made by the Lessee in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public or private debts.

15. *Survival of Guarantees, Warranties and Indemnities.* The guaranties and indemnities provided for in Article 8 hereof and in the Purchase Agreement (except as may be otherwise specified herein or therein) shall survive the termination of the Lease hereunder for any reason and the full payment of the purchase price by the Lessee.

16. *Extension Not a Waiver.* Any extension of time granted by the Lessor to the Lessee for the payment of any sum due under this Agreement, or for the performance of any other obligation hereunder, shall not be deemed a waiver of any of the rights and remedies of the Lessor hereunder or otherwise existing.

17. *Law Governing.* The terms of this Agreement and the rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties hereto shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

18. *Notice.* Any notice hereunder to the Lessee shall be deemed to be properly served if delivered or mailed to the Lessee at 345 Park Avenue, New York, New York, Attention: Vice President—Finance, or at such other address as may have been furnished in writing to the Lessor by the Lessee. Any notice to the Lessor shall be deemed to be properly served if delivered or mailed to the Lessor at the address set forth in Schedule A hereto, or at such other address as may have been furnished in writing to the Lessee by the Lessor. Any notice hereunder to any assignee of the Lessor or of the Lessee shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Lessor or the Lessee, as the case may be, by such assignee.

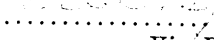
19. *Execution of Counterparts.* This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together will constitute but one and the same agreement, which will be sufficiently evidenced by any such original counterpart.

20. *Article Headings.* All article headings are inserted for convenience only and will not affect any construction or interpretation of this Agreement.

21. *Effect and Modification of Agreement.* With respect to Cars which become subject thereto, this Agreement amends the Purchase Agreement to the extent that it governs the date on which Lessee is obligated to pay the Purchase Price. This Agreement may be modified, amended or supplemented and any of its provisions or conditions waived if such actions are evidenced in writing and signed by the duly authorized officers of the Lessor and Lessee.

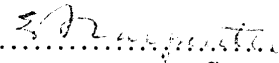
IN WITNESS WHEREOF, PACIFIC CAR AND FOUNDRY COMPANY, has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers pursuant to lawful authority; and Union Pacific Railroad Company has caused these presents to be executed and its seal to be affixed by its duly authorized officers pursuant to lawful authority, all as of the day, month and year first above written.

PACIFIC CAR AND FOUNDRY COMPANY

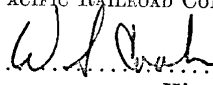
By 
Vice President

[CORPORATE SEAL]

Attest:

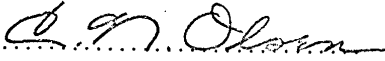

Assistant Secretary

UNION PACIFIC RAILROAD COMPANY

By 
Vice President

[CORPORATE SEAL]

Attest:


Secretary

STATE OF WASHINGTON }
COUNTY OF KING } ss:

On this 24th day of May 1971, before me personally appeared M & O Bama to me personally known, who, being by me duly sworn, says that he is Vice President of PACIFIC CAR AND FOUNDRY COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My Commission Expires
July 1, 1973

Priscilla White
Notary Public

[NOTARIAL SEAL]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss:

On this 24th day of May 1971, before me personally appeared M & O Bama, to me personally known, who, being by me duly sworn, says that he is a Vice President of UNION PACIFIC RAILROAD COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....

Notary Public

[NOTARIAL SEAL]

ELIZABETH L. GALPINE
Notary Public, State of New York
No. 30-0651300
Qualified in Nassau County
Certificate Filed in N.Y. Co. Clerk's Office
Commission Expires March 30, 1972

EXHIBIT 1

CERTIFICATE OF ACCEPTANCE

To:

I, duly appointed inspector and authorized representative of UNION PACIFIC RAILROAD COMPANY (hereinafter called the "Lessee"), for the purposes of the Railroad Equipment Lease dated as of May 1, 1971, between you, as Lessor, and the Lessee, do hereby certify that I have inspected, received, approved and accepted delivery on behalf of the Lessee and under said Railroad Equipment Lease, of the following units of railroad equipment (hereinafter called the Cars):

Type of Cars:
Place Accepted:
Date Accepted:
Number of Units:
Numbered:

I do further certify that at the time of delivery of each of the foregoing Cars, each Car was plated or marked in accordance with the provisions of Article 2 of the said Railroad Equipment Lease, that is to say, there was and is plainly, distinctly, permanently and conspicuously marked on each side of each Car the following legends* in letters not less than one inch in height:

"OWNED BY A SECURED PARTY UNDER A SECURITY
AGREEMENT FILED UNDER INTERSTATE COM-
MERCE ACT SECTION 20e"

"UNION PACIFIC RAILROAD COMPANY, LESSEE/
VENDEE"

I do further certify that the cars are in good order and condition and conform to the Specifications applicable thereto, and to all applicable Interstate Commerce Commission requirements and specifications and to all applicable standards recommended by the Association of American Railroads.

.....
Inspector and Authorized
Representative of
Union Pacific Railroad Company

* or such other legend as may be specified by the Lessee.

SCHEDULE A

<u>Lessor</u>	<u>Type</u>	<u>Specifications</u>	<u>Quantity</u>	<u>Identifying Number</u>	<u>Time and Place of Delivery</u>
Pacific Car and Foundry Company 1400 North Fourth Street Renton, Washington 98055	130,000 pound nominal Capacity Steel-Sheathed Refrigerator Cars with Mechanical Refrigeration Systems and Load Protection De- vices, Class R-70-25	PFE Specifi- cation 103, dated September 14, 1970	600	UPFE 460101 to 460700	May-July, 1971 Lessor's Plant Renton, Washington